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Dickinson Wright PLLC			HAIDER, FAWAAD	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/064,964

Filing Date: September 04, 2002

Appellant(s): UBIK ET AL.

MAILED

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GROUP 3600

Angela Brunetti

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/17/2007 appealing from the Office action mailed 7/31/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-7 are pending, rejected, and appealed. Claims 8-10 have been cancelled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments **after final** rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0163233 Song et al 8-2003

2002/0044058 Heinrich et al 4-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Song et al (US 2003/0163233 A1) in view of Heinrich et al (US 2002/0044058 A1).

As per claims 1 and 6, Song discloses a method for inventory management of a plurality of transportation vehicles wherein each vehicle has an active RF transmitter in communication with a diagnostic service bus on said vehicle (page 1, [0011] - [0012]), said method comprising the steps of: defining a service area for active transmission between said RF transmitter and a server specific to said service area; communicating data relevant to said transportation vehicle from said transmitter to said server automatically and in real time (see abstract); and determining an inventory of transportation vehicles within said predefined service area. Song does not explicitly disclose an inventory of transportation vehicles within a predefined service area but Heinrich discloses an inventory of vehicle within a predefined service area being close to the RFID transponder to collect data from the vehicle as claimed with the predefined service area being the location of the vehicle (page 1, [0006], pages 1-2, [0015], lines 1-7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the system of inventory vehicles as taught by Heinrich into

the system of Song because it would provide a savings in both time and labor to be able to audit the inventory automatically without the need for physically checking every vehicle.

As per claims 2-4 and 7, the system taught by Song is capable of indicating the step of communicating a time said vehicle entered said predefined service area to said Server; the step of communicating a time said vehicle left said predefined service area to said Server; and both the steps of: communicating a time said vehicle entered said predefined service area to said server; and communicating a time said vehicle left said predefined service area to said Server as claimed (see fig. 6).

As per claim 5, the system of Song would also determine a location of a predetermined number of vehicles having predetermined characteristics, including a destination site; and delivering said predetermined number of vehicles to said destination site due to its tracking system.

(10) Response to Argument

Appellant first argues that it would not have been obvious to one of ordinary skill in the art to add the limitation of a defined service area for determining an inventory of transportation vehicles because when the vehicle in Song is not being used, or is parked, there is no operator to communicate the information to and no need to communicate that information. The appellant further argues that neither reference (combined) is directed to defining a service area and determining an inventory of transportation vehicles as claimed in the present invention. Although Song's vehicle is sometimes in motion, there comes a point of time where the vehicle is parked, and once

it is, it becomes easier to define a service area for that particular vehicle. The utilization of Heinrich is used to disclose that the concept of defining a service area using a RFID tag is well known in the art. Both Heinrich & Song deal with collecting data from a vehicle, and the Heinrich reference can be used by Song's system to determine the inventory item of that particular vehicle. The appellant disagrees that the tracking system of Song is capable of determining a location of a predetermined number of vehicles and communicating the time of a vehicle's entry and exit of the predefined service area. Song discloses in Figure 4b (see S368, S374, S386, S372) image data, location data, in/out signal and mileage and location data, which would provide you a location of a vehicle and if necessary, a vehicle's entry and exit time.

Regarding the arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

To the extent that appellant is arguing that the references applied in the rejection fail to use the same *names/words* for certain elements as the names used by applicant, the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but *need not be in the identical words* as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Note that, although all claims have been interpreted in light of the specification, limitations from the specification have not been read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

To the extent that appellant is arguing that the disclosure in the applied prior art is not in as complete detail as is recited by the instant claims, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings *in combination with his own knowledge* of the particular art and be in possession of the invention. *In re Graves*, 36 USPQ2d 1697 (Fed. Cir. 1995); *In re Sasse*, 207 USPQ 107 (CCPA 1980); *In re Samour*, 197 USPQ 1 (CCPA 1978).

Regarding the arguments that, "The Song reference is directed to a maintenance management system" (appellants' brief, page 5, ¶2, line 1), and that, "The Song reference is directed solely to maintenance needs that are to be communicated to a vehicle's operator while the vehicle is running" (appellants' brief, page 5, ¶3, lines 1 and 2) a maintenance management system is but one of the many functions of the vehicle-related management system of Song et al. See, for example, page 1, ¶ 13.

Regarding the argument that, "The teachings of Song are concerned with the location of the vehicle only in emergency situations and are not concerned with the vehicle's destination" (appellants' brief, page 5, ¶2, lines 8-10) an emergency situation is but one of the many functions of the vehicle-related management system of Song et

al., many of which are indeed concerned with the vehicle's destination (traffic, tolls, etc.). See, for example, page 1, ¶ 13.

Regarding the argument that, "The tracking system of Song is a GPS system that is initiated by the operator in the event of an emergency situation" (appellants' brief, page 6, ¶3, lines 3 and 4) an emergency situation is but one of the many functions of the vehicle-related management system of Song et al. See, for example, page 1, ¶ 13.

Regarding the argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case the knowledge generally available to one of ordinary skill in the art would include the necessary motivations and suggestions to combine the references, as set forth in the applied rejection(s). It is the finding of the examiner that making such a modification/combination could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results, and it has been held that the main test for the tenability of any conclusion of obviousness with respect to any proposed or hypothetical combination or modification of prior art knowledge is whether or not such a combination or modification could have been performed or implemented by any person of ordinary skill in the art seeking to solve the same problem, at the time of the

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invention, with neither undue experimentation, nor risk of unexpected results. See *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

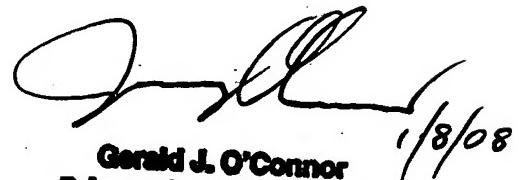
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